

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2000

Rubin Palacios,

Appellant,

v.

Kenneth S. Apfel, Commissioner,
Social Security Administration,

Appellee.

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* Appeal from the United States
* District Court for the
* District of Minnesota.
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* [UNPUBLISHED]
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Submitted: October 3, 2000

Filed: October 6, 2000

Before RICHARD S. ARNOLD, HANSEN, and BYE, Circuit Judges.

PER CURIAM.

Ruben Palacios appeals the district court's¹ denial of his application for attorney's fees and expenses under the Equal Access to Justice Act, 28 U.S.C. section 2412(d). Palacios, a prevailing party, argues the district court abused its discretion in concluding that the Commissioner's position was substantially justified. The propriety of the Commissioner's position in this social security case turned on the soundness of the administrative law judge's determination that Palacios's subjective complaints of

¹The Honorable John R. Tunheim, United States District Judge for the District of Minnesota.

pain were not credible. The district court concluded that the Commissioner's position did not lack a reasonable basis in law or fact, because the administrative law judge evaluated Palacios's subjective complaints--albeit incorrectly--under the factors set forth in Polaski v. Heckler, 739 F.2d 1320, 1332 (8th Cir. 1984). After carefully reviewing the record and the parties' briefs, we hold that the district court's conclusion was within its discretion. See Patterson v. Buffalo Nat'l River, 144 F.3d 569, 571-72 (8th Cir. 1998).

Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.